COMMISSIONER'S DECISION ON APPEAL FROM THE DIRECTOR'S OCTOBER 27, 2005 DECISION DENYING THE PROPOSED PLANS FOR DEVELOPMENT OF THE POINT THOMSON UNIT

November 27, 2006

Findings and Decision of the
Commissioner, Department of Natural Resources, State Of Alaska

I. SUMMARY OF DECISION.

This is the final Decision of the Alaska Department of Natural Resources on the appeal from the October 27, 2005 decision of the DNR Director of Oil and Gas rejecting the Twenty-second Plan of Development (22nd POD) for the Point Thomson Unit (PTU) submitted by the PTU Operator, ExxonMobil Corporation (ExxonMobil), on August 31, 2005 (Director's Decision). The Director's Decision also put the PTU in default for failure to submit an acceptable plan of development (POD) and gave the PTU lessees (Lessees) an opportunity to cure the unit default by submitting an acceptable plan of development.

This Commissioner's Decision (1) denies the request for modification of the 2001 Expansion Agreement, as amended, which affects only the expansion leases; (2) affirms the Director's Decision in all respects to the extent it is consistent with this Commissioner's Decision, but the Director's Decision is disapproved to the extent it can be read to mean the PTU contains certified wells; (3) adopts and incorporates into the Commissioner's Decision the findings and rationale of the Director's Decision as modified by this Decision; (4) rejects the cure or revised 22nd PTU POD submitted by the Lessees on October 18, 2006; and (5) terminates the PTU.

This Commissioner's Decision is effective November 27, 2006.

II. Facts.

This Commissioner's Decision relies on the facts discussed in the Director's Decision with the following additional facts:

A. Facts regarding appeal process.

The Director's Decision gave the PTU Lessees 20 days to appeal the decision and 90 days to cure by submitting an acceptable POD. ExxonMobil requested that the DNR

Commissioner grant extensions of time. The DNR Commissioner granted ExxonMobil's requests. Time was ultimately extended to October 20, 2006 to submit a cure and to November 3, 2006 to submit appeal papers. Hearing on the appeal was held November 20, 2006, and pre-filed testimony was filed November 3, 2006. Time was also extended to give the Alaska Gasline Port Authority (Port Authority), and Mr. Jim Whitaker, Mayor of the City of Fairbanks, an opportunity to be heard.

On October 18, 2006, ExxonMobil submitted a proposed cure in the form of a revised plan of development for the Point Thomson Unit. BP Exploration (Alaska) Inc. (BP) and Chevron submitted letters in support of the cure. On November 3, 2006, BP submitted additional materials in support of the cure.

On October 18, 2006, ExxonMobil also submitted a request to modify the 2001 Expansion Agreement under which 12 leases and about 40,000 acres were added to the PTU in return for Lessees' commitment to do certain items of work including the drilling of wells and agreement to automatic contraction of the expansion leases out of the unit if the work commitments were not met.

Approximately 5,000 pages of documents regarding the appeal and cure including pre-filed testimony were submitted to DNR on November 3, 2006 by various entities.[1] DNR received written submittals from a number of PTU Lessees including ExxonMobil, BP, and Chevron. In addition, DNR received written submittals from the Alaska Oil and Gas Conservation Commission (AOGCC), Port Authority, Mr. Whitaker, former Governor Walter Hickel, and former legislators and delegates

[1] These documents and an index are in the DNR file. They are numbered "PTU22P_00001 to "PTU22P_04991." Non-confidential documents are available in the DNR public file.

to the state constitutional convention, Mr. Jack Coghill and Mr. Vic Fischer.

BP requested that some of the materials it filed be kept confidential. Counsel for DNR sent an email to BP requesting that the confidential materials be redacted and resubmitted and stating that until further notice, the Commissioner would not consider confidential materials. BP submitted redacted testimony, and withdrew some documents, but insisted on confidentiality for a number of documents.

DNR did not receive a request for evidentiary hearing, and the November 20, 2006 hearing was limited to oral argument. Commissioner Michael Menge presided over the proceeding. Mr. Don Dunham of BP, Mr. Vince LeMieux of Chevron and Mr. Richard Owen of ExxonMobil made statements on behalf of the Lessees. AOGCC Commissioner and Chair, Mr. John Norman, made a statement on behalf of the AOGCC. The following persons made statements on behalf of the Port Authority and Mr. Whitaker: Mr. Mark Cotham, Mr. Daniel Johnson, Mr. Radoslav Shipkoff, and Mr. William Walker. In addition, former Governor Walter Hickel and Mr. Vic Fischer made statements. The hearing began at 9:00 AM and closed at 12:00 Noon on November 20, 2006 with no objections to the procedure used on the appeal and no presentations were cut short by the Commissioner.

Some of Lessees' key points on appeal are (1) that the appeal and adequacy of the proposed cure are to be decided under the Reasonably Prudent Operator (RPO) standard, i.e., the Lessees do not have to do anything that a RPO would not do including putting the unit into production; (2) DNR cannot terminate the unit unless it first successfully prosecutes an action, presumably jury trial in Superior Court, which finds Lessees have breached the RPO standard; (3) the revised 22nd POD / cure meets the RPO standard; (4) the unit cannot be terminated because the Lessees have been precluded from producing by a *Force Majeure* event, being the lack of a gas

pipeline, and (5) DNR and the Lessees have agreed that the only way to develop this unit is as a gas "blow down"[2] project which cannot be done until a gas pipeline is built.[3]

The assertion that DNR and the Lessees have agreed that the PTU can only be developed as a gas blow down project is not supported by the record. DNR has repeatedly requested that the unit be adequately delineated and put into production. The unit contains more than dry gas. Oil and gas liquids are also available. Lessees' assertion was expressly rejected in the DNR file and the Director's Decision:

"The premise that the PTU can only be developed if a North Slope gas pipeline is built is inappropriate. In addition to dry gas, the unit contains 100s of millions of barrels of hydrocarbon liquids. These hydrocarbons could be produced using mostly existing oil pipelines without construction of a North Slope gas pipeline." (Director's Decision at 2)

Lessees' appeal papers also assert that they have been working closely with AOGCC to obtain approval for a gas blow down project. AOGCC's position is that it has not received the cooperation of the Lessees. In April 2006 the Lessees committed to provide AOGCC access to ExxonMobil's data room not later than September 1, 2006, but as of the date of the hearing in this matter, access has not been provided to the AOGCC.

Notwithstanding Lessees' repeated assertions that the PTU is a gas reservoir which may only be developed as a gas blow down project, they have not provided AOGCC with sufficient information to determine that the PTU is primarily a gas field, as opposed to an oil field. The data available to the AOGCC

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[2] A gas blow down development produces gas and liquids together without engaging in pressure maintenance or gas re-injection (cycling) to improve recovery of liquids.

[3] Nothing in the leases, unit agreement, regulations or statues allow the Lessees to delay production until a gas pipeline is constructed.

indicates that the PTU is an oil field. Like DNR, the AOGCC has determined that an additional exploratory well or wells are necessary. The AOGCC needs the information before it can determine whether to grant the Lessees' request to treat the PTU primarily as a gas instead of an oil development.

DNR has repeatedly requested that Lessees drill an exploratory well to, among other things, better delineate the various hydrocarbon deposits and to firm up the potential of liquids production. A pure gas blow down project will result in the loss of millions of barrels of gas condensate. Neither DNR nor AOGCC are prepared to allow a pure gas blow down project in the face of such a potential hydrocarbon loss without more data indicating it is appropriate. Lessees contend the data indicate uncertainties which prevent them from engaging in liquids production, yet they refuse to obtain more data to reduce the uncertainties.

The Port Authority position can be summarized as the state has the right to terminate the PTU, and it is in the state's vital interests that the unit be terminated.

B. Facts regarding the proposed cure.

On October 18, 2006, ExxonMobil submitted a proposed cure in the form of a revised 22nd POD. Other Lessees submitted memoranda, pre-filed testimony and other documents in support of the cure.

The Director's Decision rejected the original 22nd POD because it failed to commit to put the unit into production. The 22nd POD stated that the Lessees could not find an economic way to put the unit into production. The POD stated that the unit may never be produced until there is a gas pipeline and until state taxes and royalties are modified.

Given that the unit had been in existence since 1977 and that it was known since the early 1980s to contain oil, gas liquids

and gas reservoirs, the Director's Decision found the Lessees' continuing refusal to produce unacceptable. The Director put the unit into default because the 2005 22nd POD submitted stated the Lessees had still not found a way to produce hydrocarbons from the unit. The Director's Decision gave the Lessees 90 days to cure the default by submitting a revised POD which made a meaningful commitment to put the unit into production.

In addition to gas, the PTU contains hundreds of millions of barrels of gas condensate and oil. The Director's Decision stated that a revised POD had to commit to additional exploration and delineation of hydrocarbon accumulations above and below the Thomson Sand gas reservoir. Lessees needed to have commercial project sanction by October 2006, and a commitment to begin commercial production by October 2009.

The Director's Decision included an example of an acceptable POD:

> "To cure the default, the Unit Operator shall submit an acceptable POD within 90 days, by Thursday, December 29, 2005.
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> a) An acceptable unit plan must contain specific commitments to timely delineate the hydrocarbon accumulations underlying the PTU and develop the unitized substances. The following commitments represent an acceptable PTU plan of development:
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> - Development activities for the unit, including plans and deadlines to delineate the Thomson Sand Reservoir, bring the reservoir into commercial production, maximize oil, condensate, and gas recovery, and maintain and enhance production once established; and plans for the exploration or

delineation and production of other hydrocarbon accumulations and lands that lie stratigraphically above or below the Thomson Sand Reservoir;

- The PTU Owners shall sanction a commercial PTU development project by October 1, 2006, and provide the Division with evidence of corporate approval and commitment of project funding.

- The PTU Operator shall begin commercial production of unitized substances from the PTU by October 1, 2009.

- Details of the proposed operations to fulfill the 2006 Development Drilling Commitment, including the proposed surface location of the drill pad, bottom-hole location for the well, testing plan, and schedule of activities. The consequences of failure to fulfill the 2006 drilling commitment are specified in the Expansion Agreement." (Director's Decision at 22).

In summary, the Director's Decision informed the Lessees that the POD should: (1) commit to commercial development by October 2006 including project sanction, (2) commit to prompt delineation of all PTU hydrocarbons, (3) commit to begin commercial production by October 1, 2009, and (4) set out details of the Expansion Agreement well which is supposed to be drilled by December 2006.

The revised POD submitted on October 18, 2006 did not meet the requirements set out in the Director's Decision for an acceptable POD. The revised POD was similar to the proposed 22nd POD which was rejected in the Director's Decision in that there is no commitment to develop the unit and no firm

commitment to adequately delineate the reservoirs. Again, the Lessees claim that PTU development may not occur without a gas pipeline and royalty and tax concessions.[4] The Lessees' focus is primarily on gas, and the POD made no commitments to more fully delineate PTU hydrocarbons, especially liquids which the state estimates to be hundreds of millions of barrels. Point Thomson is one of the largest oil fields on the North Slope.

The revised POD indicates that the Lessees might drill an exploratory well into the PTU. If it is not drilled by 2010, Lessees propose to pay the state $40,000,000 instead of drilling the well. The value of the well to the state greatly exceeds $40,000,000 because a well or wells are needed to adequately appraise the PTU.

The original proposed 22nd POD rejected in the Director's Decision was for one year. The revised 22nd POD submitted as the proposed cure was for a 5 year period.

C. Facts regarding the Expansion Agreement.

In 2000 the Lessees asked DNR to approve an expansion of the PTU by 12 leases and about 40,000 acres. DNR initially disagreed because the unit had not been put into production. DNR and the Lessees entered into an agreement whereby DNR would approve unit expansion on the condition that the Lessees perform certain items of work and put the unit into production with at least 7 development wells by 2008. If the Lessees failed to perform the work in a timely manner, the expansion leases would automatically contract out of the unit and the Lessees would owe DNR certain sums of money.

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[4] Between the date of the Director's Decision and the October 18, 2006 submittal of the proposed cure, the production tax was changed from a share of production to a share of net profit and the tax change also included tax benefits for additional capital investment in hydrocarbon production infrastructure. These tax benefits transfer a significant portion of the cost of development to the State of Alaska.

To date, none of the work commitments Lessees agreed to in the Expansion Agreement have been fulfilled. The Lessees have paid the state $940,000 and two expansion leases have been relinquished back to the state as a result of the failure to meet work commitments of the expansion agreement.

The next Expansion Agreement deadline is to drill a well no later than December 2006. If Lessees fail to do so, all 29,000 acres of the remaining expansion leases automatically terminate and are relinquished back to the state without otherwise requiring the state to meet the statutory and regulatory requirements for unit or lease contraction or termination. In addition, Lessees are obligated to pay the state $20,000,000.

On October 18, 2006 ExxonMobil gave DNR a proposal to modify the Expansion Agreement. ExxonMobil proposed to drop all the well requirements – a well by December 2006 and at least 7 development wells by 2008. ExxonMobil also proposed to reduce the amount of acreage that would be relinquished as a result of the failure to meet the drilling requirements and to change the acreage that would be relinquished. ExxonMobil wanted to relinquish 20,000, not the 29,000 acres, called for by the Expansion Agreement. Less than ½ of the 20,000 acres ExxonMobil proposed to relinquish consists of expansion acreage.[5] The difference between the current Expansion Agreement obligation and the ExxonMobil proposal is that under the ExxonMobil proposal the state gets back less acreage and less valuable acreage.[6] In addition, all the drilling commitments ExxonMobil agreed to are eliminated. ExxonMobil's proposal allows it to retain the most valuable

[5] The PTU is 106,800.55 acres in size of which 29,931.44 acres are made up of expansion leases. Lessees are offering to relinquish 19,847.26 acres. Only 7,349.96 acres in the proposed relinquishment are from expansion leases.

[6] Presumably ExxonMobil proposed changing the acreage to be relinquished to allow it to retain the most valuable acreage.

portions of the Expansion Acreage without putting the unit into production.

Lessees contend that the Expansion Agreement was based on the expectation of a gas cycling project. At the time of the Expansion Agreement, the Lessees' POD focused primarily on a PTU gas cycling project, but the Expansion Agreement did not require a cycling project *per se*. The essence of the expansion agreement was that the unit expansion was approved on the condition of development and production. It did not require a particular type of production. Lessees could have complied with the Expansion Agreement by producing oil, gas, liquids, or a combination thereof.

DNR originally refused to grant the 2001 expansion because the unit had not been developed. It agreed to the expansion based on promises the unit would be developed and produced. Former DNR Director Mark Myers later offered to extend the Expansion Agreement deadlines if the Lessees drilled an exploratory well to better delineate the various hydrocarbon accumulations.

In its filings on appeal the AOGCC has also indicated an additional exploratory well or wells are needed. Lessees have consistently refused these requests for additional exploratory wells. On the one hand, Lessees insist that existing data is too uncertain to allow certain types of production, but on the other hand, Lessees refuse to drill a well or to make a firm commitment to drill a well to obtain more data.

The Expansion Agreement also provided that if Lessees determined that production was uneconomic, they could have voluntarily contracted the expansion leases out of the unit with a lesser financial obligation to the state.

D. Facts regarding certified wells.

DNR Oil and Gas Directors have certified seven exploration wells drilled into the PTU as capable of producing in paying quantities. With one exception, all of the certifications were issued in the 1970s and 1980s. All of the wells which were certified have been plugged and abandoned.

The AOGCC web site shows the dates upon which the previously certified wells were treated as plugged and abandoned: (1) Alaska State C1 well July 14, 1981; (2) PTU 2 well on August 12, 1978; (3) Alaska State A1 well on September 6, 1975; (4) Staines River State 1 well on November 5, 1986; (5) PTU 1 well on December 8, 1977; (6) Alaska State F1 well on May 30, 1982; and (7) Sourdough 2 on April 27, 1994.

On April 26, 1994, Director of Oil and Gas, Mr. Jim Eason, issued a letter certifying an exploration well, Sourdough Well # 2, as capable of producing in paying quantities. The letter states in part:

"It should be noted, however, that the well is not capable of producing in paying quantities as that phrase is defined in section 9 of the Point Thomson Unit Agreement.

Generally, certification of a well as producing in paying quantities requires the Lessee to submit annual plans of development. However, if the lease is included in an approved unit, the lessee is not required to submit a separate lease plan of development for unit activities in accordance with paragraph 10(d) of the lease. Accordingly, as long as the lease remains committed to a unit, no lease plan of development will be required."[7]

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[7] DL-1 leases do not have an express provision requiring a POD upon a lease continuing beyond its primary term because of the existence of a well capable of producing in paying quantities. This is an express provision in new-form leases.

The Director knew Sourdough was not a production well. This document shows that Lessees were informed of DNR's position.

There is no existing certified PTU well capable of producing in paying quantities. A PTU production well has never been drilled. No certified PTU well exists today.

Whatever the merits of the certifications when they were originally issued, the suggestions in the Director's Decision that certified wells exist today or that the prior certifications of now non-existent exploration wells indefinitely extend the term of the leases upon which they were drilled or that the PTU should be treated as a unit with certified wells is disapproved and reversed in this Commissioner's Decision. Those suggestions are not supported by the facts. There are no certified wells in the unit capable of producing in paying quantities. All the wells which were certified have been plugged and abandoned. Inconsistent findings and statements in the Director's Decision on certified wells are hereby disapproved.

III. Discussion.

This Commissioner's Decision adopts the reasoning of the Director's Decision including, but not limited to, the analysis required by the regulations including 11 AAC 83.303. That reasoning is supplemented as follows:

A. The proposed cure.

The revised 22nd POD submitted October 18, 2006 fails for the same reasons as the originally submitted 22nd POD was rejected in the Director's Decision. Several additional points need to be made.

The proposed cure does not commit to put the unit in production. Nor does it provide a time line to achieve production. Much of the information submitted on appeal by the Lessees is focused on the risk of insufficient profit from PTU development as reason for not producing the unit.

Regarding the exploration well proposed in the revised 22nd POD. There is no firm commitment to drill the well. The offer is to pay the state $40,000,000 if the well is not drilled by 2010.

DNR has tried without success to get the Lessees to drill exploration wells to resolve among other questions the uncertainties asserted by the Lessees as a reason for not pursuing a gas cycling project. The AOGCC was also critical of ExxonMobil's approach because it assumed the only appropriate way to develop the PTU was as a pure gas blow down project before it had sufficient information to justify the conclusion that a gas cycling project was not viable. Drilling of one or more wells is required to obtain the data necessary to make that determination.

In his hearing statement, ExxonMobil's Richard Owen suggested that a well might be drilled sooner, but Lessees' written cure and proposal is that if Lessees do not drill an exploratory well by 2010, that they will pay the state $40,000,000. This is a significant sum, but a well is needed and long overdue. The $40,000,000 proposed payment is dwarfed by the benefits to the state of timely delineation and development of PTU resources. The proposed payment is no substitute for adequate delineation of the PTU hydrocarbon accumulations, now long overdue and repeatedly requested by DNR.

In addition to the terms for the proposed exploration well, the proposed term of the revised POD bears discussion. The five year term proposed in the revised 22nd POD does not provide for adequate protection of the public interest. The PTU has

been on annual PODs for most of its history. DNR has been unable to effect PTU production. It is not in the state's interest to agree to a five year POD.

B. The Reasonably Prudent Operator standard.

I find against Lessees' contention that the Reasonably Prudent Operator standard is determinative of the issues at hand. Their position is inconsistent with the applicable laws and agreements.

One of the state's most significant interests in oil and gas leasing is production. This interest is realized by compliance with the terms of the oil and gas leases that extend the lease term so long as there is production and by unitization which also extends the term of the lease so long as the unit is operating under a POD that meets the requirements of the applicable agreements, regulations and statutes.

The Lessees' appeal is based on the premise that they do not have to produce because they contend a Reasonably Prudent Operator would not produce. This position comes from Section 10 of the unit agreement regarding PODs which states that the Lessees' covenant to develop the unit as a Reasonably Prudent Operator. But section 10 says much more.

It requires the Lessees to submit PODs to DNR for approval. Section 10 includes specific requirements about the type and scope of work an acceptable POD must contain. The Director's Decision set out requirements for a PTU default cure which are consistent with the statutes, regulations, unit agreement and leases. The Lessees' proposed cure was not responsive. It did not include a commitment to produce any of the known PTU hydrocarbon reserves – oil, gas liquids or gas. The proposed POD did not make a firm commitment to further delineate the PTU hydrocarbon reservoirs notwithstanding DNR's repeated requests.

The Lessees' assertion that DNR has agreed that the only way to develop the PTU is a pure gas blow down project is contradicted by the decision on appeal and is otherwise not consistent with the DNR record. Lessees go on to suggest that the PTU will not be developed until a gas pipeline is constructed, and the state modifies its royalty and tax structure.

In reaching this decision, I have considered the entire DNR record including all documents submitted on this appeal. But I put no weight on the message in much of the Port Authority's materials which suggest that the state should terminate the unit and take the PTU leases back because it could potentially make a better deal when and if the leases are reissued. Although this could well be the consequence of the termination; it is possible that, if the unit is terminated and the leases return to the state, the state will have new leases and new lease terms which would enhance the state's potential return. But that is not the reasoning upon which this decision is based. This decision is not directly about leases,[8] and it is not about a state effort to get out of its contractual obligations.

Lessees' economics, adequate returns, and risk might be appropriate considerations in some situations. But they play no role here where the unit has been in existence since 1977, massive hydrocarbon deposits were discovered in the early 1980s, the unit has never been put into production, and the Lessees say it may never be put into production until a gas pipeline is constructed and the state compromises its taxes and royalties.[9] Against this backdrop, the state oil and gas

[8] To the extent the leases are considered, however, an appropriate consideration is that new lessees may have a different view which would result in a firm commitment to develop. However, even if the state were to get the PTU leases back, there is no bar to the existing Lessees reacquiring the PTU leases if and when the leases were reoffered for bid.

leasing system is not intended to require DNR to engage in a murky subjective contest about a Lessees' internal economics, development risk, or view of the difficulty of developing the unit. One of the state's primary interests is production. If production is not in the plan, the state's remedy is to terminate the unit and find another means to develop the unit.

This Commissioner's Decision is about enforcing the state's rights under the leases, unit agreement, regulations, and statutes regarding the continued existence of a non-producing unit. The critical facts underlying this decision are that the unit is made up of leases beyond their primary term and in many cases decades beyond their primary term. The unit has been in existence for nearly 30 years. Massive PTU reserves were found in the early 1980s. The unit has never been put into production. A PTU production well has never been drilled. The originally submitted 22nd POD and the revised 22nd POD submitted as a cure expressly admit that Lessees cannot find a viable way to produce the unit. Lessees also state that the unit may never be produced until a gas pipeline is constructed and the state makes royalty and tax concessions. The unitization scheme is intended to cause state leases to be developed efficiently. It is not intended to allow lessees to simply hold oil and gas leases indefinitely until such time as the probable profit from a project meets their subjective and internal expectations or the state agrees to modify its royalty or other contract rights or the state's right to collect taxes.

I specifically find that the Reasonably Prudent Operator standard does not apply to this Commissioner's Decision involving a long standing unit with leases far beyond their primary term and Lessees which unambiguously refuse to adequately explore, delineate, or produce massive known hydrocarbon reserves. The Reasonably Prudent Operator

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[9] Similarly, this decision is not based on the state's Stranded Gas Contract negotiation experience.

language of section 10 of the unit agreement does not supersede the other provisions of that section, or the applicable statutes, regulations or leases. Section 10 contains significant detail on what an acceptable POD must contain and the Director's Decision asked the Lessees to comply. Instead, they ask for the protection of the RPO standard, but on these facts, it matters not what a Reasonably Prudent Operator would do, the state is entitled to terminate the PTU.

The originally submitted 22nd POD was rejected because it failed to comply with the requirements for a POD set out in section 10 of the unit agreement, the regulations and the statute. The Director's Decision asked the Lessees to comply with these requirements, but they failed to do so.

C. *Force Majeure.*

Lessees assert a novel defense. They contend that the lack of a gas pipeline constitutes a *force majeure* event relieving them of the obligation to produce. Not only does this ignore potential production of hundreds of millions of barrels of gas liquids and oil, neither one of which require a gas pipeline, it is not the type of event commonly understood to qualify as *force majeure*. Lack of existing transportation infrastructure is not something which is beyond the Lessees control. I find the *force majeure* argument has no merit.

D. Certified wells.

There is no certified well in the PTU which is capable of producing in paying quantities. Statements to the contrary in the Director's Decision are disapproved.

IV. Decision.

My decision is as follows:

A. The Director's Decision is affirmed in all respects to the extent it is consistent with this Commissioner's Decision, but it is disapproved to the extent it can be read to mean the PTU contains certified wells.

B. There are no certified wells in the PTU within the meaning of the law, the leases or the unit agreement. In addition, I hereby revoke the certifications of PTU wells as being capable of producing in paying quantities effective the date they were plugged and abandoned and no later than November 27, 2006.

C. The revised 22nd POD submitted on October 18, 2006 does not meet the requirements of the Director's Decision. I also find the POD is not an acceptable cure because it does not meet the requirements of the applicable agreements, regulations or statute. The POD does not commit to put the unit into production.

D. The request to modify the Expansion Agreement is denied. The Lessees have been on notice for some time that a well needed to be drilled by December 2006 or the remaining 29,000 acres of expansion leases would automatically contract out of the unit and revert to the state. The Lessees would also owe the state $20,000,000 for failure to drill the well. They agreed to this. The state relied on their agreement in granting the unit expansion. Lessees are now in the position where a well cannot be drilled by December 2006. Their request to modify the Expansion Agreement to eliminate the requirement that this well be drilled and to also eliminate the seven (7) development wells due by 2008 is denied. This Commissioner's Decision denies the request to modify the Expansion Agreement. By failing to meet the commitments of the agreement, including the failure to prepare to drill the well due in 2006, Lessees have breached the Expansion Agreement and

the state is entitled to have the Expansion Leases back and to receive payment.

E. The PTU is terminated.

F. The documents submitted on appeal by BP with a request for confidentiality under AS 38.05.035(a)(9) were considered but they are not part of the DNR public file on this matter.

G. This Commissioner's Decision is effective November 27, 2006.

This is the final administrative order and decision of the department for purposes of an appeal to Superior Court. An appellant affected by this final order and decision may appeal to Superior Court within 30 days in accordance with the rules of the court, and to the extent permitted by applicable law.

Nov 27, 2006

Michael Menge
Commissioner
Alaska Department of Natural Resources

Date

cc:

William Van Dyke, DNR Director of Oil and Gas
John Norman, Commissioner and Chair AOGCC
Richard Todd, Senior Assistant Attorney General